RICHARD T. POPE

IBLA 76-3 Decided November 17, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring appellant's headquarters site notice of location (AA-8223) unacceptable for recordation and canceling appellant's headquarters site claim.

Set aside and remanded.

1. Alaska: Headquarters Sites -- Applications and Entries: Cancellation

   The filing of a notice of location for a headquarters site does not prevent a withdrawal from attaching to the land prior to the time the locator of the headquarters site performs the requisite acts with respect to use and occupancy necessary to establish the right to purchase.

2. Administrative Procedure: Hearings -- Alaska: Headquarters Sites -- Applications and Entries: Cancellation

   A headquarters site claim located prior to a withdrawal may be declared invalid by the Bureau of Land Management without awaiting the filing of a patent application where there has been insufficient compliance with the law to appropriate the land before the withdrawal. However, the Bureau should follow appropriate procedures. These should include giving notice to the claimant to show cause why the claim should not be invalidated where the notice of location does not show adequate compliance with the law sufficient to preclude the withdrawal, and initiating a contest and affording an opportunity

> for a hearing where there are disputed facts on the compliance with the law.

APPEARANCES: Richard T. Pope, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This is an appeal from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 13, 1975, declaring appellant's headquarters site notice of location (AA-8223) unacceptable for recordation and declaring appellant's headquarters site claim canceled. Appellant filed a headquarters site notice of location for a certain tract of land in Alaska on November 10, 1972. The notice did not allege any improvements. On March 28, 1974, Public Land Order (P.L.O.) 5418, 39 F.R. 11547 (1974), withdrew all unreserved public lands in Alaska from location and settlement under the public land laws.

On September 21, 1974, the BLM conducted a field examination of the claim and found no evidence of use of the property as a headquarters site. Thus, the field report concluded that no rights were established prior to P.L.O. 5418. The field report did describe a trailer, measuring approximately 8' x 40' and owned by appellant, which had been placed on concrete blocks approximately 35 feet from the boundary of the property, but not on the headquarters site.

[1] It is provided by statute that any United States citizen who is "engaged in trade, manufacture, or other productive industry" may purchase a claim for up to 5 acres "of unreserved public lands" as a "headquarters." 43 U.S.C. § 687a (1970). The statute has been consistently interpreted as requiring evidence of actual use and occupancy of the land claimed. Donald Richard Glittenberg, 15 IBLA 165, 168 (1974); see Clayton E. Racca, 72 I.D. 239 (1965). To receive credit for such use and occupancy, a notice of location or application to purchase must be filed within the time prescribed by 43 U.S.C. § 687a-1 (1970).

Where a purchase application has not been filed, but a notice of location has been filed, the claimant must have effectively appropriated the land by use and occupancy prior to its segregation from further appropriation by a withdrawal in order to protect his claim from being canceled. Donald Richard Glittenberg, supra at 169; David G. Marks, A-31082 (January 27, 1970). As stated in Glittenberg, supra at 169:

> * * * [U]ntil the locator performs the requisite acts to establish the right of purchase, his notice of

location does not prevent a withdrawal from attaching to the land.

See Peter Pan Seafoods, Inc. v. Shimmel, 72 I.D. 242 (1965).

[2] Although there is no express statutory requirement that improvements be constructed on a headquarters site claim, information concerning improvements, or lack thereof, is an important evidentiary factor with respect to the requisite use and occupancy of the site as a headquarters for a business. Donald Richard Glittenberg, supra at 168; Lee S. Gardner, A-30586 (September 26, 1966). Accordingly, as recognized in the BLM State Office opinion, an important question in this case is whether appellant placed any improvements on the property and, if so, whether this was done prior to the withdrawal by P.L.O. 5418, as it relates to the issue of whether the site was actually used as a headquarters prior to the withdrawal. Other important factors to be considered include information concerning the nature of appellant's business enterprise and the use of the site in connection with the business.

There is some conflict between the BLM field report and the various submissions by or on behalf of the applicant. There are three letters in the file from appellant indicating that the trailer was installed on the property in March of 1974, two of those letters indicating that installation occurred before March 11, 1974. Appellant's statement of reasons includes a report of a registered land surveyor retained by him indicating that the location of the boundary of the property as determined by BLM "appears to be 25-35 feet" off. This would place the trailer on the property line.

The record in this case is unsatisfactory on the vital questions of appellant's business operations and his use and occupancy of the site in connection with his business. Appellant has submitted some receipts which show that he performed automotive service work for which he was compensated prior to the withdrawal, although much of the evidence he has submitted shows work after the withdrawal. None of the information ties the receipts or any business activities to the land in the headquarters site.

If appellant had submitted a purchase application he would have to meet the requirements of the regulations which include, among other showings, the following:

1. The actual use and occupancy of the site. 43 CFR 2563.1-1(a)(2).

2. The nature of the trade, business, or productive industry in which the applicant or his employer is engaged. 43 CFR 2563.1-1(a)(4).

3. The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters. 43 CFR 2563.1-1(a)(5).

Furthermore, the regulations require this Department to assure before patent is issued that the lands applied for are used for the purposes contemplated by the statute, and not for any inconsistent purpose. 43 CFR 2563.1-2.

The fact that this case arose before appellant filed a purchase application may, in part, explain why the showings submitted by appellant are not complete and are not clear on the vital questions of appellant's business and use of the tract in connection with the business.

It is appropriate for BLM to take steps to declare headquarters site claims invalid prior to the filing of any patent application where the facts and the law require such a finding. However, the proper procedure to follow may vary in particular circumstances. For example, if a claimant submits statements which on their face establish there was not compliance with the law and an appropriation of the land prior to a withdrawal, it is sufficient for the BLM to issue a decision resting on those admissions and to declare the headquarters site claim invalid. See, e.g., Stephen P. Sorensen, 22 IBLA 258 (1975). However, where the facts contained in a BLM field report are denied or contradicted by the claimant, a decision canceling the claim should not be issued on the sole basis of such a report. Instead, the claimant should be given an opportunity to present evidence to substantiate his position that he has complied with the law. Cf. Don E. Jonz, 5 IBLA 204, 207 (1972); Kenai Power Corp., 2 IBLA 56, 59 (1971); Clayton E. Racca, supra; see also, Carl A. Bracale, Jr., A-31149 (April 20, 1970).

Generally the procedure to be followed where there are disputed facts in this type of case is the initiation of a Government contest under 43 CFR 4.451 with notice to the applicant and the opportunity for a hearing. Bethel J. Compton, 18 IBLA 148, 151 (1974); Don E. Jonz, supra at 207. Prior to this step being taken, however, if a notice of location does not show improvements and adequate use and occupancy to satisfy the law, it is more appropriate for BLM to issue a notice to the claimant advising him of the results of the field examination, the pertinent dates (such as date of a withdrawal), and BLM's position that the claim is invalid. The notice should afford him an opportunity to present written information and show cause why the claim should not be declared invalid. If he came in with information to dispute the Government's position, the case would proceed to a contest and a hearing.

In this case neither the notice of location nor anything else submitted by appellant adequately shows prima facie compliance with the law prior to the withdrawal. Nevertheless, because appellant has attempted to submit some information, albeit incomplete, and had no prior opportunity to do so, we believe the claimant should be afforded a further opportunity to show compliance with the law prior to the withdrawal. Upon return of this case, BLM shall issue a notice to the claimant advising him of the information required. Thereafter, BLM shall take appropriate action consistent with this decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the BLM Alaska State Office is set aside and the case remanded for further proceedings consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge